

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

MICHAEL P. WENNIGER

Group Art Unit: 1654

Examiner: Susan D. Coe

Serial No.: 10/709,746

Filed: May 26, 2004

For: NUTRITIONAL WEIGHT LOSS AGENT AND METHOD

Attorney Docket No.: FUNU 0102 PUSP

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Amendment
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a response to the Office Action mailed November 16, 2004. The Examiner has restricted the claims into two groups, Group I, claims 1-7 and Group II, claims 8-14. Applicants provisionally elect the Group I claims, claims 1-7 with traverse.

The Office indicates that Group I and Group II are distinct because the product can be used for a different purpose. Applicants respectfully disagree with the basic concept underlying the Patent Office's assertion. These inventions are related as a composition and as a process for its use. The inventions are distinctive if it can be shown that either (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. That is not the case here. Notably, claim 8, the main process claim, depends from claim 1, the independent composition claim. There is no language in either of these claims to indicate that the product could be used to practice another materially different process.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, U.S. Patent & Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on:

December 8, 2004
Date of Deposit

Michael S. Brodbine
Name of Person Signing

Signature

Moreover, the Office's demand for a restriction requirement is burdensome, not only on the Patent Office and the applicant, but also on the public. Applicants will be forced to expend considerable monies for filing and prosecuting at least one additional patent application. The Office will be burdened by multiple unnecessary applications and redundant repetition of work. The public will be generally burdened by having to consider multiple applications and patents where, in reality, the need for them does not exist. Again, claim 8 depends from claim 1. If claim 1 is allowed, claim 8 would also be allowed. There is no need to restrict these claims.

In view of the foregoing, it is respectfully submitted that the requirement for restriction be withdrawn, and an early action on the merits with respect to all the claims be issued.

Prompt and favorable consideration of this application is requested. If the Examiner notes any minor errors, she is invited to telephone the undersigned at the number given below so that the matter can be promptly handled by Examiner's amendment.

Respectfully submitted,

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Date: December 8, 2004

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